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The Justice Department's suit against this takeover is welcome, but a virtual oligopoly already exists in the US telecom market.

Antitrust enforcement is back in America, perhaps in a serious way. If so, it's long overdue.

But even though the US Justice Department is suing to block AT&T's buyout of T-Mobile USA, competition in America's telecommunications industry is fading. And there's little on the horizon, technically or politically, to suggest any improvement.

Still, Wednesday's legal action, filed by the department's antitrust division, is welcome. The George W Bush administration was easily the most lax in antitrust enforcement in recent history, and the Obama administration hadn't been significantly more ardent to protect competition. Indeed, the current government had spent three years sleepwalking on the job, including a rubber-stamping of cable-TV giant Comcast's buyout of NBC Universal ? despite the obvious anticompetitive nature of that deal.

The government's complaint in this case says what most people ? apart from those who stood to gain directly ? already knew: The deal would reduce competition in a marketplace that is already an oligopoly. From the lawsuit:

"AT&T's elimination of T-Mobile as an independent, low-priced rival would remove a significant competitive force from the market. Thus, unless this acquisition is enjoined, customers of mobile wireless telecommunications services likely will face higher prices, less product variety and innovation, and poorer quality services due to reduced incentives to invest than would exist absent the merger."

The deal could still happen, in one of several ways. The justice department's suit may simply be prelude to a deal in which AT&T makes some concessions, in terms of service or partial spinoffs, that keep the overall deal structure intact while alleviating at least some of the anticompetitive concerns. The act of going to court, however, suggests that either AT&T wasn't interested in dealing or that the government simply found this buyout unacceptable on its face.

Sometimes, companies fight hard to complete deals opposed by antitrust regulators; the justice department and federal trade commission essentially split these duties in America. For example, Oracle beat the department's attempt ? one of the very few Bush antitrust initiatives ? to block its buyout of PeopleSoft in 2004, winning at trial after a lawsuit that showed fairly persuasively that competition would not be irreparably harmed. (I am attending a huge trade show this week sponsored by Salesforce.com, which has become a formidable competitor since the Oracle-PeopleSoft case.)

AT&T's lobbying efforts on behalf of this deal, and its brazen lack of regard for reality, have been epic. An ineptly redacted document filed with the federal communications commission ? an agency that has shown no inclination to protect consumers or competition in the telecoms arena ? made abundantly clear (as if it wasn't already) that the primary motive for the buyout was to reduce competition, contrary to countless statements about how this would be great for customers. Sadly, people who should know better endorsed the deal, including a normally sensible trade union, the Communications Workers of America, which liked the idea because AT&T is a union shop and T-Mobile isn't. (The union, locked in a bitter battle with Verizon, might consider that making the company more powerful, even as it lays off lots of employees, wouldn't necessarily help workers overall.)

Even if AT&T is fully blocked from this purchase, however, there's a larger problem: telecommunications in the US have become a nearly unregulated oligopoly as a whole, and effectively a duopoly or outright monopoly in many local areas. This is true in the wire-line market and, increasingly, the wireless arena. They are enforcing scarcity of service, which is one way they make money.

As law professor and telecoms expert Susan Crawford explains in a must-read analysis, AT&T and Verizon are heading toward dupoly status in any event, in part because T-Mobile and Sprint, the also-rans in the American national wireless market, don't control as much prime spectrum (airwaves) as they need to in order to fully compete ? and they aren't likely to get it in the future. Writes Crawford:

"As things stand now, both of these dominant network access wireless providers have the freedom to act as an editor or gatekeeper for its own commercial purposes. They would like their services to be much more like cable programming than general purpose communications ? edited and constricted communications offerings. AT&T and Verizon have succeeded in persuading federal regulators that they should not be treated as communications providers, and see the future potential for vertically integrated services that they control and monetise. They have a giant built-in conflict of interest."

The justice department's action doesn't change this in the slightest. And the Obama administration overall has been toothless on promoting competition in one of the 21st century's most vital industries. Data communications aren't going to replace the highways of the past, but they are as vital a transportation link, if not more so, than anything that has come before. Meanwhile, a Congress that is largely owned and operated by corporate interests has been overtly hostile to fostering competition.

What this means should worry, if not terrify, everyone who believes in a telecoms market that operates fairly and neutrally. The telecoms giants have every incentive to reward incumbents, especially themselves and tech/media partners who can pay enough to get priority. They have even

more incentive, as a result, to choose who will get to innovate in the future.

If you wanted to strangle progress, this would be a good place to start.